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RUEHKL/AMEMBASSY KUALA LUMPUR IMMEDIATE 8170
RUEHGO/AMEMBASSY RANGOON IMMEDIATE 6759
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SUBJECT: LIMITED PROGRESS TO DATE ON IMPLEMENTING CHANGES
TO THE INA FOR REFUGEE CASES

REF: BANGKOK 266 REQUEST FOR GUIDANCE ON NEW REFUGEE
PROCESSING LEGISLATION

¶1. Summary: In response to reftel, this message provides an update on the Administration's efforts to implement the changes to the Immigration and Nationality Act resulting from section 691 (Division J) of the Omnibus Appropriations Act for FY08

(Kyl/Leahy amendment). PRM met on February 21st with representatives of DHS Policy and Office of the General Counsel, DHS/USCIS, DHS/ICE, and DOJ to discuss an implementation plan particularly pertaining to refugee cases. Since some 50% of the refugee cases worldwide affected by material support are in Thailand and Malaysia, PRM focused much of the discussion on steps that are required in order to grant cases, overturn denials, and to cease putting cases no longer subject to inadmissibility on hold. Finding solutions for these applicants which will permit those eligible to be admitted to the US is a top priority. As you are aware, however, most of the actions necessary to move forward fall to DHS. The DHS representatives reported that they have issued interim guidance (which we asked to see but have not received a copy) and are developing final field guidance to implement these changes in the INA. They are also drafting a proposal for a new exemption for those who engaged in combat on behalf of any of the 10 groups removed from Tier III under Kyle Leahy. Pending the issuance of additional field guidance, DHS confirmed that their officers in the field have been told to continue to put material support cases on hold and use the exemption process. Jock Scharfen, DHS/USCIS Deputy Director, and Barbara Strack, DHS/USCIS Refugee Corps Director should provide Post with additional details when they are in Thailand next week. End Summary

¶2. Newly Interviewed Cases Still Being Placed on Hold: DHS confirmed field officers will continue to put newly interviewed cases on hold for material support to the groups for whom exemptions are already in place and continue to use the exemption process to review the cases and make decisions. We stressed that doing so uses scarce DHS/Bangkok and OPE resources for cases that will no longer require an exemption.

We noted that approximately 100 individuals per week in Thailand are being placed on hold for material support, mostly to the KNU and the CNF, both of which are no longer Tier III terrorist organizations. The DHS representatives could not provide an estimate of when the additional field guidance would be completed. We request that Post raise this issue with Scharfen and Strack.

¶3. A Few Old Cases May NOW Be Approved Without Use of New Exemptions:

PRM has identified a small group of cases previously adjudicated in Thailand and Malaysia that were put on hold for grounds that could not be exempted (the most prominent

being tax collectors for the Chin National Front) and subsequently closed but that may now be readily approved , since the CNF and the KNU are no longer considered terrorist organizations. DHS has agreed to review a small number of cases that may be approved on this basis. PRM/A will coordinate with DHS Headquarters, Regional Refugee Coordinator, and OPE Director to identify appropriate cases for review and present them to DHS asap.

14. Combatants Will Need a New Exemption:

An initial review of the closed cases from Tham Hin indicates that more than half the caseload involved individuals who engaged in active combat. As such, a new exemption for engaging in combat (which falls within the definition of terrorist activity in the INA) will be required for these cases to become approvable. DHS informed us that they are already drafting a proposal for an exemption for combatants who fought on behalf of one of the groups removed from Tier III. We asked DHS to agree to a public information campaign for this population once the exemption has been approved.

15. Petchaboon Hmong

PRM raised this issue at the meeting. DHS/USCIS representatives will be prepared to discuss in Bangkok next week this potential caseload and how the Hmong waiver and the changes to the INA could affect their eligibility for admission to the United States. They understand that UNHCR is interested in understanding USCIS' position in advance of referring cases.

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